

REMARKS

In the Office Action mailed March 3, 2008, claims 1-5 were rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,864,483 (Brichta) in view of U.S. Patent No. 6,523,027 (Underwood).

Claims 6-19 have been cancelled, without prejudice, to filing such claims in divisional applications.

New claims 20-34 are readable on the elected species.

It is respectfully submitted that independent claim 1 is non-obvious over Underwood and Brichta.

To make a determination under 35 U.S.C. § 103, several basic factual inquiries must be performed, including determining the scope and content of the prior art, and ascertaining the differences between the prior art and the claims at issue. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 U.S.P.Q. 459 (1965). Moreover, as the U.S. Supreme Court held, it is important to identify a reason that would have prompted a person of ordinary skill in the art to combine reference teachings in the manner that the claimed invention does. *KSR International Co. v. Teleflex, Inc.*, 127 S. Ct. 1727, 1741, 82 U.S.P.Q.2d 1385 (2007).

Here, it is respectfully submitted that a comparison of the hypothetical teachings of Underwood and Brichta will reveal that such teachings are significantly different from the claimed subject matter. As conceded by the Office Action, Underwood fails to disclose "SLA (service level agreement)." 3/3/2008 Office Action at 2-3. It is noted that Underwood fails to disclose more than just the SLA. Specifically, Underwood fails to disclose "calculating a baseline metric value for each of a plurality of component SLAs in a computing system **that operate to form a composite SLA,**" in combination with "comparing a historical metric value for each of the plurality of component SLAs to their respective baseline metric value to determine if each historical metric is sufficient to ensure **that the composite SLA is met.**"

Although Brichta refers to SLAs, Brichta does not provide the concept of a composite SLA formed from component SLAs. In the passage of column 11 cited by the Office Action, reference is made to SLAs, SLA A and SLA B, as depicted in Fig. 3B of Brichta. In Fig. 3B, a dashed line 58 represents SLA A, and a dashed line 60 represents SLA B. Fig. 3B also depicts occurrences of services in an information processing environment. Brichta, 11:26-29. The

plotting of the occurrences of services made in Fig. 3B of Brichta is to allow for detection of occurrences that fall within a danger zone. Brichta, 11:55-59. Such occurrences that fall within the danger zone are identified and details regarding such occurrences are stored. Brichta, 14:45-48. There is nothing anywhere in Brichta to even remotely hint at calculating a baseline metric value for each of a plurality of component SLAs that operate **to form a composite SLA**, nor is there any teaching in Brichta to hint at comparing a historical metric value for each of the plurality of component SLAs to their respective baseline metric value to determine if each historical metric is sufficient to ensure that **the composite SLA is met**.

In view of the foregoing, it is clear that even if Underwood and Brichta could be hypothetically combined, their hypothetical combination would not have led to the claimed subject matter, pursuant to the *Graham* analysis.

Moreover, no reason existed that would have prompted a person of ordinary skill in the art to combine the teachings of Underwood and Brichta to achieve the claimed invention. As noted above, Fig. 3B of Brichta shows individual SLAs and plotting of occurrences of services to enable comparison of such occurrences with respect to the individual SLAs. There is no hint given in Fig. 3B, or anywhere else in Brichta, that it would be desirable to form a composite SLA to determine if a historical metric is sufficient to ensure that the composite SLA is met.

Underwood similarly fails to provide any hint of the claimed subject matter, since Underwood merely refers to performing baselining to determine a normal state of a network, as a benchmark to analyze troubleshooting data against, and a reference point for historical trend analysis. Underwood, 249:9-16. There is absolutely no hint in Underwood of a plurality of component SLAs to form a composite SLA, nor is there any hint of a comparison of historical metric values to baseline metric values to determine if each historical metric is sufficient to ensure that the composite SLA is met. Therefore, a person of ordinary skill in the art would not have found any reason to combine the teachings of Underwood and Brichta to achieve the claimed invention.


Newly added independent claim 30 is similarly allowable over Underwood and Brichta.

Dependent claims, including newly added dependent claims 20-29, and 31-34, are allowable for at least the same reasons as corresponding independent claims.

Allowance of all claims is respectfully requested. The Commissioner is authorized to charge any additional fees and/or credit any overpayment to Deposit Account No. 08-2025 (200310994-1).

Respectfully submitted,

Date: June 3, 2008



Dan C. Hu
Registration No. 40,025
TROP, PRUNER & HU, P.C.
1616 South Voss Road, Suite 750
Houston, TX 77057-2631
Telephone: (713) 468-8880
Facsimile: (713) 468-8883